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March 31, 2020

**By: Electronic Filing**

Hon. Joel H. Peck, Clerk  
State Corporation Commission  
Document Control Center  
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1300 East Main Street  
Richmond, VA 23219

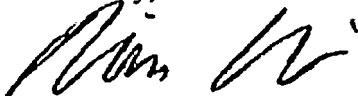
**Re: Application of Toll Road Investors Partnership II, L.P.  
For authorization for an increase in the  
Maximum level of tolls  
Case No. PUR-2019-00218**

Dear Mr. Peck:

Enclosed for filing in the above-referenced proceeding please find Toll Road Investors Partnership II, L.P.'s Response to Motion for an Extension of Time to File Direct Testimony and to Amend the Procedural Schedule.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Timothy E. Biller

**Enclosures**

cc: William H. Chambliss, Esq.  
Andrea B. Macgill, Esq.  
Andrew J. Flavin, Esq.  
Andrea D. Gardner, Esq.

**COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION**

<b>APPLICATION OF</b>	)	
	)	
<b>TOLL ROAD INVESTORS</b>	)	<b>CASE NO. PUR-2019-00218</b>
<b>PARTNERSHIP II, L.P.</b>	)	
	)	
<b>For an increase in the maximum</b>	)	
<b>Level of tolls</b>	)	

**RESPONSE TO MOTION FOR AN EXTENSION OF TIME TO FILE DIRECT  
TESTIMONY AND TO AMEND THE PROCEDURAL SCHEDULE**

On March 24, 2020, counsel for the Board of Supervisors of Loudoun County (“Loudoun County” or the “County”), filed a Motion for an Extension of Time to File Direct Testimony and to Amend the Procedural Schedule (“Motion”) with the State Corporation Commission (“Commission”) seeking to extend the deadline for filing direct testimony to October 2, 2020, and to modify other procedural deadlines established by the Commission’s Order for Notice and Hearing issued on January 27, 2020 (“Procedural Order”). For the reasons stated below, Toll Road Investors Partnership II, L.P. (“TRIP II”, the “Greenway” or “Company”) respectfully requests that the Hearing Examiner deny the Motion.

**BACKGROUND**

1. On December 20, 2019, TRIP II filed an application with the Commission for an increase in the maximum level of tolls pursuant to the Virginia Highway Corporation Act of 1988, § 56-535 *et seq.* of the Code of Virginia (“Code”). On January 23, 2020, Commission Staff deemed TRIP II’s Application complete upon the filing of TRIP II’s Supplemental Direct Testimony.

2. On January 27, 2020, the Commission issued its Procedural Order that, among other things, established opportunities for interested parties to participate in this proceeding and set a schedule for the fair and orderly consideration of TRIP II's Application. As established by the Procedural Order, Respondents may file direct testimony and exhibits on or before April 25, 2020, the Staff must file its report on or before May 8, 2020, and TRIP II may file any rebuttal testimony on or before May 22, 2020. The evidentiary hearing is scheduled for June 9, 2020.

3. Pursuant to Paragraph (5) of the Procedural Order, TRIP II served a copy of the Procedural Order to the mayor of the Town of Leesburg, the chairs of the boards of supervisors of Fairfax and Loudoun Counties, the chair of the Metropolitan Washington Airports Authority, the chair of the Commonwealth Transportation Board, and the Secretary of Transportation of the Commonwealth on February 18, 2020. TRIP II also published notice of its Application to the public on one occasion in newspapers of general circulation in Fairfax and Loudoun counties prior to February 18, 2020, as required by Paragraph (6) of the Procedural Order.

4. Loudoun County filed a Notice of Participation on March 16, 2020. Pursuant to Paragraph (10) of the Procedural Order, TRIP II provided the County a copy of the Procedural Order, a copy of the public Application, and copies of the public version of all materials filed by the Company with the Commission on March 18, 2020.

5. On March 24, 2020, Loudoun County filed the Motion at issue here.

### **RESPONSE**

6. In its Motion, Loudoun County seeks a significant extension in the time provided by the Commission in its Procedural Order to file direct testimony and amend the procedural

schedule.<sup>1</sup> According to the County's Motion, the nearly six-month extension requested is necessary because the County's employees will be responding to the current novel coronavirus ("COVID-19") outbreak "through at least the end of the summer."<sup>2</sup>

7. The Company is cognizant of the disruptions caused by the COVID-19 outbreak and appreciates the County's efforts in responding to the COVID-19 pandemic. These uncertain times, however, require thoughtful and strategic approaches to business-as-usual practices not a mandated halt as suggested by the County.

8. In response to the COVID-19 outbreak, TRIP II has modified its business practices to protect its employees as well as the people of Loudoun County and the surrounding region. TRIP II, however, has no intention to stop serving the drivers that choose to drive on the Greenway and is committed to continuing to operate the road to serve those drivers. TRIP II expects that the County shares this same sentiment as it continues to serve the needs of the citizens and businesses in Loudoun County both in response to COVID-19 and in response to the general needs of the County. Despite the reality that everyone in the Commonwealth must now bear additional burdens because of these unprecedented times,<sup>3</sup> it is simply inappropriate to unilaterally seek a six-month halt to the business before the Commission based on COVID-19 absent the potential for actual harm to be imposed upon interested parties.<sup>4</sup>

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<sup>1</sup> See Motion at 2-3.

<sup>2</sup> *Id.* at 3.

<sup>3</sup> On March 30, 2020, Governor Ralph Northam issued Executive Order Number Fifty-Five (2020) in response to COVID-19 ("COVID-19 Order"). The COVID-19 Order does not appear to explicitly limit business before the Commission. Nevertheless, the COVID-19 Order extends only until June 10, 2020, at this time, and if it is not rescinded earlier would require only a one day delay in the start of the evidentiary hearing in this matter should the Commission decide to not hold hearings while the COVID-19 Order is in effect.

<sup>4</sup> Indeed, the Commission has established clear requirements to prevent harm to anyone having business before the Commission from COVID-19, rather than suspending all hearings at this time. This allows the

9. As an initial matter, Loudoun County was well aware of the Company's Application before the COVID-19 outbreak became a concern. Indeed, TRIP II attempted to meet and discuss the Application with County officials, albeit unsuccessfully, as early as December 2019. On January 30, 2020, representatives from the Greenway were finally able to meet in person with the Chair and other members of the Board of Supervisors as well as the County Administrator to discuss multiple matters, including the Company's Application.<sup>5</sup> At that meeting, TRIP II was informed of the County's desire to oppose this Application. On that same day, the County Attorney testified at the General Assembly in front of the House Committee on Labor and Commerce regarding HB 523, discussing in detail the proposed toll increases in TRIP II's Application in this proceeding and the County's interpretation of the legal standards that it believes should be applied by the Commission when reviewing this Application.<sup>6</sup> The County certainly had actual notice of this proceeding and could have chosen to become involved well before concerns with COVID-19 began to disrupt anything in the Commonwealth. Its failure to do so does not warrant a six-month stay in the procedural schedule.

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Commission to continue to process the business before it. Acknowledging the Commission's current protection measures and the fact that at least one of its witnesses resides outside of the country, TRIP II has begun making contingency plans to ensure adequate witness participation at the June 2020 hearing, including the use of video conferencing for live testimony, if permitted, and the substitution of witnesses, if needed.

<sup>5</sup> In comments at the Board of Supervisor's February 2, 2020 business meeting, Supervisor Letourneau noted that he had met with representatives of the Greenway to discuss the pending Application at the Commission. These remarks can be viewed at <https://viriniageneralassembly.gov/house/committees/commstream.html>, timestamp 2:58:22.

<sup>6</sup> This testimony may be viewed at <https://viriniageneralassembly.gov/house/committees/commstream.html> and selecting the video record of the meeting of the House Committee on Labor and Commerce on January 30, 2020. The County Attorney's testimony on these issues can be found beginning at timestamp 6:03 PM and again at 6:06 PM.

10. Further, although the County Attorney, who has appeared before the Commission on multiple occasions and is clearly knowledgeable about the issues in this proceeding, may be occupied with the County's efforts related to COVID-19, the County has retained a well-regarded and competent law firm (the "Firm") to represent the County's interests in this proceeding. As is typically the role of outside counsel, the Firm can take an active role in preparing direct testimony for the County and responding to procedural matters so the County and its employees can devote time to the COVID-19 outbreak. The County can also, if it has not already done so, retain a traffic or other expert to respond to the Application and further develop any direct testimony anticipated by the County. There is no need to suspend this proceeding simply because resources may need to be allocated differently than initially envisioned or practiced in the past.

11. TRIP II understands the need for flexibility in these unprecedented times and does not seek to minimize the importance of the County's efforts in the face of the unprecedented demands being placed on all levels of government as well as businesses and individuals within the Commonwealth at this time. Nevertheless, TRIP II should not be denied the ability to have its Application heard by the Commission in a timely manner under the schedule that the Commission determined to be appropriate because the County does not want to expend resources on this proceeding after it chose to intervene.

12. TRIP II is prepared to proceed on the current schedule and has been providing timely responses to the Commission Staff's multiple interrogatories despite its own employees being occupied responding to COVID-19. It also understands that the Commission Staff do not agree with a six-month extension. Accordingly, the Company respectfully requests the Commission deny the County's Motion in its entirety.

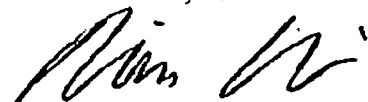
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WHEREFORE, TRIP II requests that the Commission or the Hearing Examiner deny the Motion to File Direct Testimony and to Amend the Procedural Schedule.

Respectfully submitted,

TOLL ROAD INVESTORS  
PARTNERSHIP II, L.P.

March 31, 2020

By   
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 31<sup>st</sup> day of March, 2020 a true copy of the foregoing Response was delivered by electronic mail, by hand, or mailed, first-class, postage prepaid, to the following:

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